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July 22, 1993

FEDERAL COMMUNICATIONS COMMISSION  
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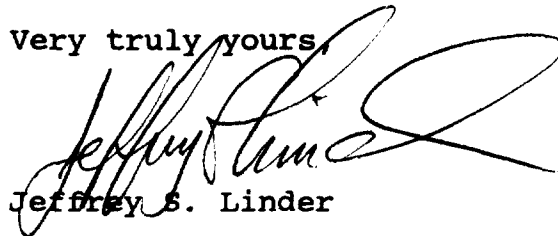
Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Ex Parte Contacts in CC Docket No. 93-36

Dear Mr. Caton:

I am writing to advise you that Robert J. Butler, Jeannie Su, and I met today with Linda Oliver on behalf of Aeronautical Radio, Inc., and the Tele-Communications Association to discuss the Commission's proposal to streamline tariff regulation of nondominant carriers. A copy of the handout of talking points which we presented is attached hereto.

Very truly yours,



Jeffrey S. Linder

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**PREVENTING CARRIERS FROM ABROGATING  
SERVICE AGREEMENTS**

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- **User-Carrier Agreements Are Not Mutually Enforceable**
  - Carriers can change the rates, terms, and conditions in long-term contracts through unilateral tariff filings
  - The tariff will take precedence if supported by "substantial cause" -- which is not a major hurdle
  - Users, in contrast, are bound by their service agreements and resulting tariffs
  
- **The Recent AT&T v. FCC Decision Exacerbates The Risks To Users**
  - By requiring all carriers to file tariffs -- which are subject to minimal review -- the decision substantially increases the exposure to rate increases that violate contractual rate stability commitments and material terms and conditions of service
  - Even if Congress authorizes forbearance, a change in the tariff precedence policy is needed because carriers may choose to file tariffs
  
- **Tariff Precedence Interferes With The Workings Of The Competitive Long Distance Marketplace**
  - Regulation should replicate the incentives and attributes of a competitive marketplace wherever possible

- By virtue of the tariff precedence doctrine, however, IXCs can engage in conduct that would constitute a breach of a commercial contract, yet still hold the user to its end of a much less attractive bargain

- **Tariff Precedence Harms Users**

- Users are deprived of certainty, which is essential in setting budgets and comparing bids from competing service providers
- Many users are not aware that their contracts are not mutually enforceable, and accordingly do not take steps to protect themselves
- Users who are aware of tariff precedence must expend substantial time and resources seeking imperfect ways to minimize their exposure
  - At best, users get a right to terminate without liability in the event of a rate increase -- but still must incur substantial costs in changing carriers
  - Often, users are not successful in obtaining such a right
  - In other cases, they must make concessions on other terms and conditions simply to gain a right that is unquestioned in an unregulated marketplace

- **Recommended Solutions**

- **The FCC should:**
  - **Require carriers to notify affected parties before filing a tariff that would abrogate a rate stability commitment or material term or condition of service in an underlying long-term contract or tariff**
  - **Require carriers to file any such tariff on 120 days' notice**
  - **Suspend such filings for the full statutory period and require a detailed and compelling demonstration that the increased rates or changed terms and conditions are just and reasonable**
  - **State that such filings, like above-cap rates, will be found lawful only in "rare instances, if any"**
  - **Provide that, if any such filing is allowed to take effect, the customer may terminate service without liability, notwithstanding any tariff or contract provision to the contrary**
  - **Declare unlawful, pursuant to Sections 201(b) and 205 of the Communications Act, tariff filings that seek to abrogate commitments in long-term tariffs not to modify rates, terms, and conditions**